

STATE OF MICHIGAN
COURT OF APPEALS

LYNESE RUPP,

Plaintiff-Appellant,

v

SHIAWASSEE COUNTY COMMUNITY
MENTAL HEALTH BOARD,

Defendant-Appellee.

UNPUBLISHED

March 10, 2005

No. 248197

Shiawassee Circuit Court

LC No. 01-007261-NZ

Before: Donofrio, P.J., and Markey and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Plaintiff, a high school graduate, began her employment with defendant in 1991, in a support staff position, earning approximately \$17,000 per year. In 1995, she was offered the position of office manager, earning approximately \$26,000 per year. Her immediate supervisor, the assistant to the director/projects manager, was on leave at the time of the hiring, and Judith Hovey, the executive director of the department of community health, supervised plaintiff. In 1999, defendant posted a vacancy for director of administrative operations. The advertised posting indicated that the successful applicant needed a master's degree in facilities management with a human resources concentration or a master's degree in human resources with a concentration in facilities management. Despite the education requirements, Hovey gave plaintiff the position of "acting" director of administrative operations on April 26, 1999, with a salary of \$44,558, a non-union position.

The contract of plaintiff's supervisor, Hovey, expired on September 30, 2001, and it was not renewed. It was negotiated that Hovey could retrieve her personal items on October 1, 2001. However, plaintiff entered defendant's premises, at Hovey's request, and retrieved those items. As a result, plaintiff was placed on a brief administrative leave. On October 10, 2001, plaintiff received a letter from the interim director of community health, advising that she was being transferred to the position of purchasing/operation support supervisor, with a salary of \$37,414.

The parties' account of the transfer diverges. Plaintiff asserts that she was told that her loyalty to Hovey put her in the "hot seat" and that she could resign if she did not accept the

lateral transfer. Defendant asserted that plaintiff's job performance was at issue in light of her limited education, her handling of a computer matter, and the hiring of contractors to perform some of her job functions. Therefore, defendant asserted that it took the opportunity to evaluate the position and transition it into three positions: (1) purchasing/operation support manager; (2) deputy finance officer; and (3) director of human resources. Defendant asserted that this decision resulted in a significant cost savings. Plaintiff accepted the transfer position, but counsel for plaintiff sent a letter dated October 17, 2001, demanding reinstatement to her former position. Plaintiff left defendant's employment in May 2002, when she accepted another support position with a different employer.

On October 26, 2001, plaintiff filed a complaint, alleging:

1. She entered into defendant's employment November 16, 1991, and from April 26, 1999 to October 9, 2001, she held the position of Director of Administrative Operations.
2. On October 9, 2001, she was demoted to the position of purchasing/operations support supervisor, at a substantially reduced salary.
3. Such demotion was
 - a. without just cause,
 - b. contrary to defendant's personnel policy,
 - c. made for the purpose of forcing plaintiff to resign, and
 - d. followed by a series of intimidating threats intending to make plaintiff's continued employment untenable.
4. Further, defendant's actions were malicious, willful and made in reckless disregard of plaintiff's feelings, thus entitling her to an award of exemplary damages in excess of \$25,000 to compensate her for the humiliation, sense of outrage and indignity so intentionally inflicted upon her by defendant, in addition to the relief sought below.

Defendant moved for summary disposition of the complaint. The trial court initially denied the motion, concluding that questions of fact precluded summary disposition. Upon rehearing, the trial court granted defendant's motion for summary disposition, concluding that a claim for wrongful demotion could not be maintained under the circumstances.

Plaintiff alleges that the trial court erred in granting defendant's motion for summary disposition. We disagree. As an initial matter, we note that the allegations as pleaded in the original complaint are unclear. For example, the complaint seemingly alleged intentional infliction of emotional distress. Additionally, plaintiff alleged in response to the motion for summary disposition that defendant violated the Open Meetings Act, MCL 15.261 *et seq*; however, the complaint failed to plead any such violation. Therefore, we will address the issues as alleged in plaintiff's brief on appeal.

We review summary disposition decisions de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). The moving party has the initial burden to support its claim to summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed fact exists for trial. *Id.* To meet this burden, the nonmoving party must present documentary evidence establishing the existence of a material fact, and the motion is properly granted if this burden is not satisfied. *Id.* Affidavits, depositions, and documentary evidence offered in support of and in opposition to a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiff alleges that the trial court erred in concluding that her position had been eliminated, erred in failing to address the claim of constructive discharge, and erred in failing to consider whether the reorganization was designed to avoid defendant's policies and procedures. We disagree. Review of the deposition and documentation submitted by defendant indicated that the organization of plaintiff's department had been called into question before plaintiff was demoted. Plaintiff's documentary evidence submitted in opposition contained opinion evidence that she performed as required, but did not contradict the need for reorganization. Moreover, the interim director testified that plaintiff's former position was divided into three positions. Plaintiff contends that the interim director testified that the position was not eliminated. However, review of the deposition testimony, in context, reveals that the position was divided into three regardless of any formal elimination. Plaintiff's characterization, an exercise in semantics, will not create a factual issue precluding summary disposition. *Camden v Kaufman*, 240 Mich App 389, 397; 613 NW2d 335 (2000). Additionally, a constructive discharge occurs when the "employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation." *Fischhaber v General Motors Corp*, 174 Mich App 450, 454-455; 436 NW2d 386 (1988). The conduct complained of that was substantiated with documentary evidence did not rise to the level of a constructive discharge, and a demotion has not been equated with termination under *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579; 292 NW2d 880 (1980). *Id.* at 455. Accordingly, the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Pat M. Donofrio
/s/ Jane E. Markey
/s/ Karen M. Fort Hood